

## **IF TOMORROW COMES!**

**(S. Jai Kumar, Advocate)**

Last December my daughter insisted that we erect a Christmas tree at home and we did. She decorated it so well by hanging church bells, glittering stars and golden balls that I started feeling Bethlehem at home! On 24<sup>th</sup> eve she was a bit nervous and started writing something on a piece of paper and then dropped it in a sock and hung it on one of the branches of the Christmas tree! When I asked, she said that it was her wish list and Uncle Santa Claus would come that night and shall fulfill all her wishes written on that piece of paper! Inspired, I also wrote some of my wishes and put it in another sock and hung it beside hers, expecting Santa Claus would come and fulfill them, someday!

### **Customs:**

Over years, Customs has always been an eerie for one and all! Be it a MNC or an esteemed Corporate or a one time importer, customs clearance haunts to be a nightmare! Even today, Customs clearance is one area which everyone would love to hate! With my limited experience both in and out of the department, I can bet that the most cursed job on this planet is that of a Customs Clearing Agent! Ask any CHA, he would definitely curse his fate for having chosen such a profession! It is a common sight that, day in and day out, these poor CHAs would loiter around the corridors of the Custom Houses like a swarm of mosquitoes around a sewage pond to get their bills assessed and goods cleared! The ritual of clearance of a cargo from manifest to filing of Bill of Entry, assessment to audit and duty payment to docks is nothing but a painful ordeal! Even in this so called era of liberalization, it is crude and a cruel fact that, the boorish behaviour of most of the customs officers towards these CHAs needs immense refinement.

Unlike in Excise, you can't wait for your dispute to get settled in Customs. Every day of delay in clearance is a very costly affair. This urgency to clear makes the Customs a more powerful and menacing department! There is no time to fight your rights before clearing your cargo as there are various other financial implications like demurrage, rent, interest etc, which would eat your purse and cost you dear! So the importers are crucified to clear their cargo at the earliest!

Today, most of the imports are made by the joint venture companies from their foreign counterparts. Such cases are invariably referred to the Special Valuation Branch as they are *prima-facie* imported from "related persons". Immediately such imports are subjected to provisional assessments and levied with an Earnest Duty Deposit (EDD). But do you know, once you enter this unending cave of provisional assessment, it takes none other than "Ali Baba" to rescue you from the cave! Today, in most of the Custom houses, the number of such provisional assessments pending shall beat the waves of Pacific in number! The hapless importers go on paying the EDD for years (maybe decades!) and go on making provisions in their books of accounts dreaming that, some day, the assessments would be finalized and the EDD paid would be refunded! The Customs department is so lethargic in not finalizing these cases because, in most of the cases upon finalization, either the importers are not required to pay anything more than the transaction value or the EDD paid by the importers would be much more than the differential duty they are required to pay! I wish and pray that there shall be a definite time period for finalization of provisional assessments! Alternatively, in place of EDD the importers may be asked to execute a

General Bond without any guarantee, which will stimulate the department to finalise the provisional assessments, on priority!

### **Excise:**

Amongst various areas, as on date, adjudication under Excise is really suffering in ICU! Today, the orders-in-original are nothing but confirmed show cause notices. The belief in the quasi-adjudication is eroding very fast by the hopeless orders passed by the spineless Revenue officers, across the nation! Be it an Assistant Commissioner or a Commissioner, the orders are passed invariably erring on the revenue side! Though this grievance has been voiced very loud in various media, there seems to be no improvement. On the contrary, the situation is now depleting to very abysmal depths owing to the pressure from the Board to complete adjudication within prescribed periods! Today the adjudicators believe only in the quantity of disposals and do not bother about the quality of their orders. In their haste to liquidate their pendency list they are ready to sacrifice even the basic thumb rules of adjudication, namely, following the principles of natural justice. I know a Commissioner who used to give the requisite three dates of hearings as per the present Section 35C in the show cause notice itself and proceed to pass *ex-parte* orders. The funniest part is that these three dates would be three successive dates in a week! That too, for cases involving crores of demand based on tons of records and where the investigation would have taken not less than two years to issue the SCN! It is an immediate requirement that there shall be a thorough attitudinal change in the bureaucratic mindset and the Government should think ways to regulate and improve the quality of this depleting quasi-adjudication and bring some accountability among the adjudicators! There shall be some stringent actions against the officers who pass such frivolous orders and make the life of the hapless assessee miserable!

### **Service Tax:**

Though born as a co-sister of Excise and Customs, today, it is slowly the powerful sister-in-law and this tax of the future really needs certain immediate and special attention! Raising my hand along with the crowd in demanding a separate codified Act, I also suggest it is time to have a codified Tariff for service tax. Today most of the disputes in service tax are about classifying the service under proper category. When one says it is Construction service the other says it is Erection, Commissioning and Installation. Similarly, no one knows as to what is the difference between Business Auxiliary Service and Business Support Service. Like Customs and Excise, there is a readymade codified tariff available for services also, which can be borrowed and adopted *mutatis mutandis*. This would really help the administration of the levy to a very greater extent in the longer run. Also this would really minimize (if not eradicate) the disputes on classification! Apart from the above, it is also high time to enhance the four lakhs threshold exemption for service tax and bring in service tax under the powers of Settlement Commission to settle the disputes.

### **Before Parting...**

A fervent prayer to Mr. Bean of Service tax not to issue any reckless circulars (like the one issued on GTA) and cause a national pandemonium!